

Before the
New Hampshire Real Estate Commission
Concord, New Hampshire 03301

In The Matter Of: Docket No.: 2012-018
New Hampshire Real Estate Commission v. Gilda K. Stigliano
License No.: 047330
(Adjudicatory/Disciplinary Proceeding)

FINAL DECISION AND ORDER

Before the New Hampshire Real Estate Commission ("Commission") is an adjudicatory/disciplinary proceeding In the Matter of Gilda K. Stigliano ("Respondent" or "Ms. Stigliano") in Docket Number 2012-018.

Background Information:

The Commission Investigator Ann Flanagan received a telephone call from Troy Mills complaining about Ms. Stigliano. Mr. Mills stated that he had been using Respondent as a rental agent after seeing her advertising on Craigslist. Mr. Mills indicated that he was signing documents which Respondent repeatedly stated were disclosures not contracts. Respondent's Compensation Agreement with Troy Mills is titled, "Disclosure Real Estate Agency/Tenant Compensation Agreement". Mr. Mills complained that when he signed documents, the lines for indicating the property addresses were blank and Respondent told him she would fill in the addresses later, and Mr. Mills was concerned about which properties Respondent would be expecting compensation. Mr. Mills stated that Respondent did not give him copies of the documents he signed. Mr. Mills ended up renting a property through another real estate agency and the agency was not willing to co-broke with Respondent because she was not involved in the transaction. Respondent feels she is due compensation because the property was one of the properties Respondent had emailed to Mr. Mills. Respondent feels Mr. Mills owes her compensation even though there was no executed lease because his rental application indicates a property at 30 Penacook Terrace, Merrimack, NH, and that Mr. Mills refused to execute a lease because he could not come to terms with the landlord. Mr. Mills stated to Investigator Flanagan that Respondent told him that she would not cash his check until he

signed a lease agreement, and Respondent attempted to cash the check after Mr. Mills had put a stop payment on it. Subsequent to an investigation, on September 26, 2012, the Commission issued a Notice of Hearing for a hearing scheduled for October 16, 2012. The Commission granted a Pre-Hearing Conference to be held on October 16, 2012, at the request of Attorney Johnson, on behalf of the Respondent. A Pre-hearing Conference was held on October 16, 2012, and the hearing was scheduled for November 20, 2012.

On Tuesday, November 20, 2012, at 10:00 a.m., the Commission commenced the adjudicatory/ disciplinary hearing in the above captioned matter. Commission members present¹ were:

David C. Dunn, Commissioner, Presiding Officer
Daniel S. Jones, Commissioner
Paul A. Lipnick, Commissioner
James R. Therrien, Commissioner

The prosecution was conducted by Ann Flanagan, the Commission's Investigator. Ms. Stigliano was present and represented by Attorney Matthew R. Johnson.

The following exhibits were introduced into evidence and accepted into the record:

- Complainant Investigator Flanagan's Exhibits:
Exhibit #1 - Complaint File 2012-018: pages 1-155.

- The Respondent's exhibits:
Exhibit A –E-mails to and from Respondent Stigliano disclosing Ms. Stigliano's real estate fees.
Exhibit B – E-mails to and from Respondent Stigliano disclosing Ms. Stigliano's real estate fees.
Exhibit C – Letters submitted on behalf of Respondent Stigliano regarding the accuracy of her ads on properties and the disclosure of her real estate fees.

¹ These same Commission members also deliberated and voted on this Final Decision and Order.

There were no witnesses present at the hearing.

Findings of Fact:

In light of the testimony and exhibits, the Commission finds the following facts:

1. Respondent was first granted a real estate salesperson license on November 14, 1995, and granted a real estate broker license on February 22, 2000. At the time of the allegations, Respondent was licensed as a real estate broker, license #047330.
2. At the hearing Attorney Johnson moved to dismiss the Complaint based on the fact that the Complainant has the burden of proof and Mr. Mills, the complaining party was not present to testify and the Respondent has a right to cross examine the complaining party. The Commission's Presiding Officer explained that the Real Estate Commission was the Complainant of Complaint File No. 2012-018, therefore the Motion was denied.
3. Attorney Johnson supplied the Commission with an Advertising Template that was proposed at the Pre-Hearing Conference held on October 16, 2012, which will be used by Respondent to make her rental ads clear that there is a real estate broker fee charged by Respondent, and agreed to remove the word "Disclosure" from her compensation agreement to read, "Real Estate Agency/Tenant Compensation Agreement" (Ex. 1, pg. 48). The Commission made suggested changes to the template submitted. On motion by Commissioner Dunn, seconded by Commissioner Lipnick, the Commission approved the following amended template:

**Gilda Stigliano Real Estate
Advertising Template**

Pet Friendly

There is a nonrefundable fee for the credit report cost if you submit a rental application. If you decide to submit a rental application, there is a real estate broker fee. If the owner denies the application, there is no real estate broker fee due.

Owner may consider allowing a pet.

No Pets

There is a nonrefundable fee for the credit report cost if you submit a rental application. If you decide to submit a rental application, there is a real estate broker fee. If the owner denies the application, there is no real estate broker fee due.

4. Respondent testified at the hearing that Troy Mills contacted her on a Sunday about an ad he saw on Craigslist for 30 Penacook Terrace, and wanted information about the property. Respondent stated she informed him about her agency relationship and real estate fee and decided he did not want to work with her.

5. Respondent testified that she contacted Mr. Mills to inform him that she found 3 homes on the MLS that were vacant. Mr. Mills contacted her 20 minutes after their phone conversation, stating that he talked to his wife about the properties and Respondent went over the agency disclosure and fee agreement with Mr. Mills and emailed the documents to Mr. Mills and that he could fax the signed documents back to her. Respondent stated that Mr. Mills said he was in a hotel and that it was too late to fax the documents and would send the documents the following morning.

6. Respondent testified that Mr. Mills stated that he would send the documents back to her by Monday, because Monday was the showing. She stated that Mr. Mills did not show up for the showing on Monday. Respondent stated that Mr. Mills contacted her on Tuesday and asked if she could show him the properties, and she told him she couldn't on Tuesday, but she would set up a showing on Wednesday and that she needed the Brokerage Relationship Disclosure form completed.

7. Investigator Flanagan referred to the Compensation Agreement in Exhibit 1, pages 48-49 that was completed for 3 Aspen Lane in Amherst, New Hampshire and asked the Respondent if Mr. Mills completed a Compensation Agreement for 30 Penacook Terrace in Merrimack, New Hampshire.

8. Respondent stated that Mr. Mills looked at Penacook Terrace on Tuesday night and wanted to see other homes on Wednesday. He completed the Compensation Agreement in Exhibit 1, pages 48-49 on Wednesday, not for Penacook Terrace.

9. Investigator Flanagan asked the Respondent why the Rental Application was completed for 30 Penacook Terrace, but not the Compensation Agreement. (Ex. 1, pg. 50)

10. Respondent stated that Mr. Mills executed the Compensation Agreement (Ex. 1, pages 48-49) on Wednesday, but expected this Compensation Agreement for 30 Penacook Terrace on Tuesday.

11. Investigator Flanagan asked the Respondent if she expected to be compensated for 30 Penacook Terrace which Mr. Mills saw on Tuesday.

12. Respondent stated that she expected to be compensated because his application was accepted by the landlord for 30 Penacook Terrace.

13. Investigator Flanagan asked the Respondent why the Compensation Agreement did not list 30 Penacook Terrace (Ex. 1, pages 48-49).

14. Respondent stated that Tuesday night was when Mr. Mills saw Penacook Terrace and on Wednesday we had other appointments scheduled, but Mr. Mills did not show for the appointments. Respondent stated that she found out from the other agent for Aspen Lane that he was trying to bypass her, because he did not want to pay her real estate fee, so when she met him at Aspen Lane, Mr. Mills was a little uncomfortable, because he knew that I knew he attempted to bypass me. Respondent stated Mr. Mills applied for 30 Penacook Terrace at the Aspen Lane showing, because the home on Aspen Lane was too small. Respondent stated that she forgot to change the address from 3 Aspen Lane to 30 Penacook Terrace on the Compensation Agreement (Ex. 1, pages 48-49).

15. Investigator Flanagan asked the Respondent if Mr. Mills wrote her a check for 30 Penacook Terrace.

16. Respondent stated that Mr. Mills gave the check with the application for 30 Penacook Terrace on Wednesday, and she presented his application and did his credit checks and the owner agreed to lease to Mr. Mills, and the owner signed and dated the lease.

17. Respondent stated that she informed Mr. Mills that the check gets cashed according to the Compensation Agreement as soon as he has been approved by the landlord. Respondent stated she sent a letter to Mr. Mills that she cashed the check, because he had been approved for

the lease by the owner. Respondent stated that the check was returned as insufficient funds, and that was when the Respondent knew that he was backing out of the deal.

18. Attorney Johnson asked the Respondent if there was a specific discussion about when the check was to be cashed and what she discussed with Mr. Mills relative to when the check was cashed.

19. Respondent stated when she went over the Compensation Agreement with Mr. Mills on Wednesday that the Agreement accompanies the application and once he has been approved for the lease, she cashes the check. Respondent testified that she asked Mr. Mills if the check was going to clear, and Mr. Mills responded that it would definitely clear. Respondent stated that she called Mr. Mills on Thursday and informed him the lease was approved.

20. Attorney Johnson asked the Respondent if the signature and initials on the Compensation Agreement were Mr. Mills, (Ex. 1, pages 48-49) and if Mr. Mills signed initialed these pages in her presence.

21. Respondent testified that Mr. Mills did sign and initial the Compensation Agreement in her presence.

22. Attorney Johnson asked the Respondent if Mr. Mills ended up leasing a property that she had showed him. Respondent stated that he did end up renting on Cricket Hill.

Relevant Law:

RSA 331-A:1 Purpose. It is the policy of this state to regulate the practice of real estate brokers and salespersons in order to ensure that they meet and maintain minimum standards which promote public understanding and confidence in the business of real estate brokerage.

331-A:25-b, II (a) -

II. The duties of a licensee acting on behalf of a seller or landlord to a buyer or tenant include:

(a) Treating all prospective buyers or tenants honestly and insuring that all required real estate condition disclosures are complied with.

331-A:26, Prohibited Conduct. – The following acts, conduct or practices are prohibited, and any licensee found guilty after a hearing shall be subject to disciplinary action as provided in RSA 331-A:28:

IV. – Making, printing, publishing, distributing, or causing, authorizing or knowingly permitting the making, printing, publication or distribution of false statements, descriptions or promises of such character as to reasonably induce any person to act, if the statements, descriptions or promises purport to be made or to be performed by either the licensee or licensee's principal, and the licensee

then knew or, by the exercise of reasonable care and inquiry, could have known of the falsity of the statements, descriptions or promises.

XXV. – Failing to voluntarily furnish copies of all documents to all parties executing the documents.

XXVI. – Advertising the availability of real estate or the services of a licensee in a false, misleading or deceptive manner.

XXIX. – Unprofessional conduct defined in RSA 331-A:2, XV.

Rea 404.03 – Copies of Written Instruments.

(a) A broker shall, after execution by all parties, deliver the original of any instruments to any party or parties executing the same without delay when:

- (1) Such instrument has been prepared by such broker or under her or his supervision;
- (2) Such instrument relates to the employment of the broker;
- (3) Such instrument pertains to the consummation of a lease, purchase, sale or exchange of real property; or
- (4) Such instrument pertains to any other type of real estate transaction in which a broker participates.

Rulings of Law:

The Commission makes the following findings by a preponderance of the evidence:

1. Respondent shall use the advertising template presented to the Commission at the hearing and remove the word "Disclosure" from her Compensation Agreement. The Commission rules that Respondent did not violate any of the alleged statutes or rules.


IT IS FURTHER **ORDERED** that the Respondent's failure to comply with any terms or conditions imposed by this Final Decision and Order shall constitute unprofessional conduct pursuant to RSA 331-A:26, XXIX, and a separate and sufficient basis for further disciplinary action by the Commission against the Respondent.

IT IS FURTHER **ORDERED** that this Final Decision and Order shall become a permanent part of the Respondent's disciplinary file, which is maintained by the Commission as a public document.

IT IS FURTHER **ORDERED** that if this decision is not appealed within 30 days of the effective date, it shall become final. See RSA 331-A:28, III ("The action of the commission in revoking, suspending, or denying a license or accreditation, or levying a fine, shall be subject to appeal to the superior court at

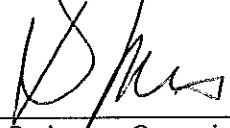
the instance of the licensee or an accredited individual, institution, or organization, within 30 days after the filing of the commission's decision...").

IT IS FURTHER **ORDERED** that this Final Decision and Order shall take effect as an Order of the Commission on the date the Commission signs it.




David C. Dunn, Presiding Officer

2/19/2013
Date



Daniel S. Jones, Commissioner

2/19/13
Date



Paul A. Lipnick, Commissioner

2/19/13
Date



James R. Therrien, Commissioner

02/19/2013
Date

*\ William E. Barry, Commission member, (case evaluator) recused.